



CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

J-5

DISTRIBUTION: A, B, C, J, S

CJCSI 2300.01A

12 February 1999

INTERNATIONAL AGREEMENTS

References(s): See Enclosure E

1. Purpose. This instruction provides information necessary to implement and supplement reference a. Additionally, this instruction provides only procedural guidance. Substantive authority to negotiate or conclude an international agreement must be derived from the US Constitution, public law, treaties, executive agreements, or Federal regulations.
2. Cancellation. CJCSI 2300.01, 15 September 1994, is canceled.
3. Applicability. This instruction applies to the Joint Staff, combatant commands, and Defense agencies reporting to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff. These organizations will use this instruction to negotiate and conclude agreements for which approval authority has been delegated to the Chairman of the Joint Chiefs of Staff by reference a. This instruction does not apply to agreements involving primarily single-Service matters. Those Defense agencies and Services negotiating and concluding international agreements within the geographic area of responsibility of any of the combatant commands will coordinate such agreement with the cognizant combatant commander in accordance with subparagraph F2a of reference a. Relationships between commanders of combatant commands and international commands and organizations are governed by reference b.
4. Policy. Reference a delegates authority to the Chairman of the Joint Chiefs of Staff to negotiate and conclude certain types of international agreements concerning joint forces and related matters. In exercising and redelegating authority, the Chairman applies DOD policy on the negotiation and conclusion of international agreements. This instruction implements current DOD policies that apply to the Chairman of the Joint Chiefs of Staff and delegated authorities.

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5. Definition. "International agreement" is defined in Enclosure 2 of reference a. An agreement is an international agreement and subject to this instruction and reference a if it meets the requirements of Enclosure 2 of reference a, regardless of the label or title attached to the document. Thus, contingency or operations plans that contain commitments not covered by existing agreements may constitute international agreements if they are cosigned or agreed to by US and foreign officials. The operative requirement is whether the document signifies an intention of the parties to be bound in international law.
6. Delegations. Policies concerning and delegations of authority to negotiate and conclude international agreements are set forth in Enclosure A.
7. Responsibilities. Responsibilities are outlined in Enclosure B.
8. Summary of Changes. To incorporate OSD/IG directed changes and other changes designed to make the negotiation, review, and conclusion of international agreements more timely and responsive to the needs of the warfighting commanders.
9. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components (to include the combatant commands), other Federal agencies, and the public may obtain copies of this instruction through the Internet from the CJCS Directives Home Page--<http://www.dtic.mil/doctrine/jel/cjcsd.htm>. Copies are also available through the Government Printing Office on the Joint Electronic Library CD-ROM.
10. Effective Date. This instruction is effective upon receipt.

For the Chairman of the Joint Chiefs of Staff:



STEPHEN T. RIPPE
Major General, USA
Vice Director, Joint Staff

Enclosure(s):

- A--Delegations
- B--Responsibilities
- C--Processing Guidelines
- D--Sample Letter of Transmittal
- E--References

DISTRIBUTION

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US Liaison Officer to SACLANT.....	5
US National Military Representative to SHAPE.....	5
Chairman, Military Communications-Electronics Board.....	5

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ENCLOSURE A

DELEGATIONS

1. Delegations of Authority to CJCS

a. In paragraph M of reference a, the Secretary of Defense delegates authority to the Chairman of the Joint Chiefs of Staff to negotiate and conclude certain agreements, except those having policy significance as described in paragraph 4 below. See specifically the following subparagraphs of reference a: M1b, M2b, M3b, M5b, and M8b.

b. Certain delegations in paragraph M of reference a must be interpreted consistent with the following guidelines:

(1) There is no delegation of authority for technical or implementing arrangements that conflict with or make commitments beyond those authorized or contemplated by the underlying treaty or executive agreement.

(a) There is delegation of authority for project annexes and other documents that provide technical content for an umbrella agreement, provided these are linked to, or derived from, specific provision contained in the umbrella agreement.

(b) There is delegation of authority if the terms of the implementing arrangement are clearly anticipated or identified in the underlying agreement. (For example, if the underlying agreement requires the Parties to share common costs of a joint-use facility overseas based on the percentage of actual use, the negotiation and conclusion of an implementing arrangement to work out methods of measuring use, calculating costs, and payment of bills would be within this delegated authority. A proposed implementing arrangement to establish a completely different cost sharing formula would not.) However, if the proposed implementing arrangement contains a new or altered obligation not contemplated by the parties, authority is not delegated.

(2) There is no delegation of authority if the implementing arrangement revises Status of Forces Agreement rights or places restrictions on operating rights.

(3) Even when authority has been delegated to the Chairman of the Joint Chiefs of Staff (and redelegated, as in paragraph 2 of this Enclosure) to negotiate and conclude an agreement, it remains necessary to fully coordinate the agreement. Such coordination should begin early

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and continue throughout the negotiation process. Both the initial negotiating text, prior to being tendered at the start of the negotiation, and the final negotiated text, if it incorporates substantive changes from the initial approved text, must be fully coordinated.

(4) Although authority has been delegated to negotiate personnel exchange agreements, the negotiation and conclusion of personnel exchange agreements that rely upon authority delegated to the Chairman of the Joint Chiefs of Staff require that coordination be sought from the Department of State. The Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff's (OCJCS/LC) will coordinate such actions, as appropriate, with the Under Secretary of Defense for Policy (OUSDP).

(5) Authority has been delegated to negotiate logistic support agreements. Reference c, however, applies to logistic support agreements under the Acquisition and Cross Servicing Authority in chapter 138 of title 10, United States Code. Subparagraph E4a of reference c requires that proposed new or major revisions to master cross-servicing agreements will be referred to OUSDP for review and authority to conclude. Such referral will be accomplished by the Director for Logistics (J-4) in consultation with OCJCS/LC.

(6) Questions about procedures to be followed under reference a, including whether authority must be obtained to negotiate a particular agreement, should be directed to OCJCS/LC.

(7) OCJCS/LC will coordinate all international agreements requiring Circular 175 authority with OUSDP. In accordance with reference a, OUSDP will accomplish the required Circular 175 authority with the Department of State.

2. Redelegation of Authority. Except as noted in paragraphs 3 and 4 below, the approval authority delegated to the Chairman of the Joint Chiefs of Staff is redelegated to the CINCs. Further redelegation to commanders of subordinate combatant commands, component commands, joint task forces, and US Defense representatives is authorized. The organization to which approval authority is initially delegated will be responsible for compliance with the provisions of reference a, regardless of whether the delegated authority is further redelegated. That organization will forward two copies of revised or new implementation documents, if any, to the Secretary, Joint Staff, within 60 days of the date of receipt of this instruction and as significant changes occur. The normal commander-staff relationship, in which the staff element acts by direction of or for the commander, is not considered redelegation.

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3. Authority Reserved by The Chairman Joint Chief of Staff. The authority delegated to the Chairman of the Joint Chiefs of Staff is NOT redelegated for the following types of international agreements:

a. Agreements concerning specific subcategories of military communications equipment, systems, or procedures as follows:

(1) US COMSEC equipment. References d and e provide policy and procedures on negotiating and concluding international agreements concerning COMSEC matters. These agreements must be approved by the Director, NSA.

(2) The US Defense Communications System (DCS) (including AUTODIN and its follow-on systems, the Defense Message System (DMS), Defense Information Systems Network (DISN), Defense Switched Network (DSN), and the Defense Red Switch Network (DRSN)).

(3) CJCS-controlled telecommunications and C2 equipment.

(4) Military satellite communications.

(5) Configuration Management--Procedural Interface Standards (Message Text Formats/Tactical digital Information Links) and Technical Interface Standards (Spread Spectrum Communications Systems).

b. Communications-Electronics (C-E) agreements under the purview of the US Military Communications-Electronics Board.

c. Reference e provides policy and procedures on negotiating and concluding the types of international military telecommunications agreements described in the preceding two subparagraphs.

4. Agreements Having Policy Significance. The authority delegated to the Chairman of the Joint Chiefs of Staff, as described in paragraph 2 above and redelegated to the CINCs in subparagraph 2, does not apply to agreements having policy significance within the meaning of subsection H4a of reference a.

a. The term "policy significance" is to be broadly interpreted. Any subject that has been formally raised for discussion at the ASD level, or its equivalent in a foreign government or in an international organization, should be considered to have policy significance. When there is uncertainty about the authority to negotiate an agreement, it may be sent informally to OCJCS/LC for clarification.

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b Agreements or proposals that involve major unprogrammed fiscal obligations, affect US security commitments, or are otherwise restricted by reference a should be sent through channels to the Director, Joint Staff, in accordance with Section I of reference a, with recommendations for further action. As appropriate, and after review by the Joint Staff and the OCJCS/LC, the Director, Joint Staff, will forward the proposal to OUSDP. Agreements that involve major unprogrammed fiscal obligations funded by a DOD component or Defense Agency should also be coordinated with the funding sponsor.

ENCLOSURE B

RESPONSIBILITIES

1. Each organizational element exercising delegated authority under this instruction will name a single office of record for administration and control of international agreements, to include maintaining a repository of agreements and carrying out other record-keeping functions as required. This office is responsible for maintaining records of all international agreements that exist in its area of responsibility and validating the continued requirements for existing international agreements.

2. Combatant commands will:

a. Incorporate international agreements into operations and exercise plans, where appropriate.

b. At the end of each calendar year, update and reconcile their master index of international agreements with their subordinate commands.

c. Not later than 1 March each year, forward a hard copy and an electronic copy (Microsoft Word or ASCII format) of the complete reconciled master index (with annotations to show agreements concluded and/or terminated in the previous calendar year) to the Director, Joint Staff. The index will include the following information for each agreement:

(1) The country with which the agreement was made.

(2) The governmental entity of the country, if applicable, with which the agreement was made.

(3) The title of the agreement.

(4) The date of signature.

(5) The date of entry into force.

(6) The specific authority providing the substantive legal basis for the Department of Defense to enter into the agreement and to expand funds to implement it.

(7) The date of termination (if any).

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(8) Current status (active or inactive)--if inactive, give reason for the inactive status.

(9) General Purpose.

(10) Who holds the original signed text.

(11) Classification.

3. The Secretary, Joint Staff, is designated as the central office of record for:

- a. Receiving requests for authorization within the Joint Staff.
- b. Assigning action to the cognizant staff agency.
- c. Forwarding completed actions if appropriate;
- d. Providing a single repository for the receipt, retention, and retrieval of records of international agreements negotiated and concluded under the authority of the Chairman of the Joint Chiefs of Staff including those forwarded by the combatant commands.
- e. Maintain a complete updated master index of all international agreements (annotated to show agreements concluded or terminated in the previous calendar year) of the Joint staff and combatant commanders.
- f. Providing a copy of the updated master index to the office of the DOD General Counsel (DOD(GC)) and each of the combatant commands by 31 March each year
- g. Reconciling of the OCJCS master index of international agreements with DOD(GC).

4. The Joint Staff directorates, acting on matters of international agreements according to their assigned staff functions and the nature of the matter referred to them, will:

- a. Obtain the necessary coordination and approval within the Joint Staff, other DOD agencies, and consult with the Department of State, as appropriate.
- b. Provide the Secretary, Joint Staff, a complete record of each completed action, including the applicable coordination and authorization.

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c. Document the review of combatant commands' operation plans to ensure that applicable international agreements have been included, where appropriate.

d. Document the inclusion of applicable international agreements in Chairman-sponsored exercises.

5. On matters concerning broad policy for international agreements or encompassing the responsibility of more than one directorate, the Director for Strategic Plans and Policy (J-5) will normally be assigned lead responsibility within the Joint Staff.

6. Legal advisors and staff judge advocates will conduct all required legal reviews. For the Office of the Chairman of the Joint Chiefs of Staff and for the Joint Staff, OCJCS(LC) will perform this function.

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ENCLOSURE C

PROCESSING GUIDELINES

1. The responsible organizational element will submit all proposals for negotiating or concluding international agreements under the authority of the Chairman or CINCs to the appropriate legal adviser or staff judge advocate for review and concurrence. Proposals will be submitted before offering draft agreements to a prospective party and before initialing or signing any such international agreement. Personnel in the unified commands or their subordinate units will not make any unilateral commitments to a foreign government or international organization, either orally or in writing, before seeking review and obtaining concurrence of the legal adviser or staff judge advocate of the combatant command involved.
2. All proposals for negotiating or concluding international agreements that include US financial obligations or have any other cost or fiscal implications will be submitted to the comptroller of the combatant command, or Joint Staff, as appropriate. The comptroller will conduct a fiscal review of the proposed undertaking and document that review in a fiscal memorandum that follows the format of reference f.
3. Combatant commands may delegate responsibility for the legal and fiscal reviews required by paragraphs 1 and 2 above to subordinate commands or units that have the delegated authority to negotiate international agreements.
4. Combatant commands will designate an official responsible for reviewing all agreements that call for disclosure of classified information to ensure compliance with reference a and National Disclosure Policy-1 (NDP-1). An official will also be responsible for reviewing technology assessment control plans and issuing delegation of disclosure Letters. For the Joint Staff, the Director, DIA (J-2), is assigned those responsibilities.
5. Command that negotiate international agreements with environmental consequences are responsible for ensuring that they are informed of the environmental aspects of the agreement, and for complying with the requirements of Executive Order 12114 of 4 January 1994, or its successor. If the agreement requires Circular 175 authority, the request for such authority should include a brief analysis of the environmental considerations required by Executive order.

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6. The negotiation and conclusion of an amendment or extension to an international agreement must be approved in accordance with the requirements of this instruction by the same US headquarters or office that approved the original agreement or by another headquarters or office that has been expressly delegated the authority to approve amendments or extension to that agreement.

7. Paragraph H11b of reference a applies when a foreign language text is signed simultaneously with the English language text.

8. The command that negotiates an international agreement will maintain a complete negotiating history for that agreement in retrieval form. The file must be kept for the duration of the agreement or until it has no further legal significance.

9. Within 20 days after the agreement has been signed, the responsible organizational element will send copies of each agreement concluded under the authority delegated to the Chairman of the Joint Chiefs of Staff or redelegated to subordinate commander as follows:

a. Two reproducible copies to the General Counsel, Department of Defense, Washington, D.C. 20301-1600.

b. One reproducible copy to the Assistant Legal Advisor for Treaty Affairs, Department of State, Washington, D.C. 20520.

c. One reproducible copy to the Secretary, Joint Staff.

d. Copies to any other offices and agencies prescribed by the combatant commands or other competent authority.

10. All copies will be certified to be true copies of the original agreement.

11. A letter of transmittal is required for each agreement (see sample format in Enclosure D). In addition, the following information will be included:

a. Summary of the terms of the agreement, as well as any interpretive statements or side letters that may have been signed at the time the agreement was concluded.

b. Background information, including reference to any treaty or other agreement that the agreement implements and the circumstances under which it was negotiated.

c. If classified, who the classifying agencies are and the downgrading or declassification instructions.

d. A statement of textual conformity if a foreign language version of the agreement was signed simultaneously with an English version. Guidance is set forth in Title 22, Code of Federal Regulations, Section 181.4(h).

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ENCLOSURE D

SAMPLE LETTER OF TRANSMITTAL

Date

From: _____ (e.g., Headquarters, USEUCOM/J-5)

To: _____ (e.g., Secretary, Joint Staff)

Subject: Transmittal of an International Agreement

1. Type of agreement (e.g., bilateral or multilateral).
2. Parties to the agreement.
3. Title and subtitle, as appropriate.
4. Subject of the agreement.
5. Summary of the terms of the agreement.
6. All agencies, US and foreign, responsible for carrying out the provisions of the agreement.
7. Background information, including reference to any treaty or other agreement that the agreement implements and the circumstances under which it was negotiated. Include the title(s) and date(s) of the agreement(s), if any, on which the agreement is based or which the agreement amends.
8. The effect of the agreement, including the benefits to be gained and the costs to the parties.
9. Discussion of the domestic legal authority that authorizes the Department of Defense or its agencies to enter into the agreement.
10. Date of signature and date the agreement will enter into force.
11. Period of the agreement and the expected date of termination.

12. Printed names of all signing officials, their titles and offices they represent, and their countries or international organizations.
13. Geographic locations where the agreement was signed.
14. Organizational element responsible for maintaining the negotiating history for the agreement.

NOTE: All copies must be certified to be true copies of the original as signed.

ENCLOSURE E

REFERENCES

- a. DOD Directive 5530.3, 11 June 1987, "International Agreements"
- b. CJCSI 5130.01A, 31 August 1997, "Relationships Between Commander of Combatant Commands and International Commands and Organizations,"
- c. DOD Directive 2010.9, 30 September 1988, "Mutual Logistics Support Between the United States and Governments of Eligible Countries and NATO Subsidiary Bodies"
- d. CJCSI 6510.01, 1 September 1993, "Joint and Combined Communications Security"
- e. CJCSI 6740.01, 18 September 1996, "Military Telecommunications Agreements and Arrangements Between the United States and Regional Defense Organizations or Friendly Foreign Nations"
- f. DOD Directive 7220.9M, Chapter 28, 26 June 1989, "DOD Accounting Manual: International Agreements"
- g. DOD General Counsel letter, 11 July 1996, "Interim Guidance of DoD Directive 5530.3 (International Agreements)"
- h. DOD General Counsel letter, 12 September 1997, "Interim Guidance of DoD Directive 5530.3 (International Agreements)"

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